



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bru Construction, Co. Inc.

File: B-223463

Date: September 18, 1986

DIGEST

1. Protest challenging requirement that contractor perform various services for which the solicitation does not provide specific compensation is without merit where the protester does not show that the risks imposed are unreasonable. The mere presence of risk in a solicitation does not render it inappropriate, and bidders are expected to consider the degree of risk in calculating bid prices.
2. Whether a contracting activity will comply with its obligations to furnish housing and storage facilities to the contractor is a matter of contract administration and not for consideration under the General Accounting Office's Bid Protest Regulations.

DECISION

Bru Construction Co., Inc., protests the terms of invitation for bids (IFB) No. N62470-86-B-7878, issued by the Naval Facilities Engineering Command, Guantanamo Bay, Cuba. In a pre-opening protest, Bru contends that several sections of the statement of work are so indefinite that they prevent prospective contractors from bidding on a common basis.

We deny the protest.

The Navy plans to award an indefinite quantity contract for the survey and maintenance of wooden utility poles at Guantanamo Bay Naval Base; the work includes furnishing all necessary labor, transportation, equipment, materials, supplies, and supervision. The Navy permitted bidders to inspect the site before submitting fixed unit prices for three separate tasks for an estimated 2,000 poles. These tasks included: (1) survey; (2) chemical/repair (chemical treatment of 1,500 poles and reinforcement of 500 poles); and (3) inventory and inspection.

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Bru alleges that several requirements set forth in connection with the inventory and inspection are defective. Specifically, the contractor is responsible for the removal of brush and weedy undergrowth when making below-ground inspections, and must provide and affix metal numbers to misnumbered poles. These provisions, Bru maintains, do not identify the amount of such work to be performed by the contractor. At the time of bidding, Bru states, it would have no way of knowing how many poles will require the removal of brush and weeds, or how many poles will have to be renumbered, and an inspection of the worksite will not alleviate this problem. Only during actual performance, Bru continues, will the precise level of work required become known. Bru also complains that the IFB does not identify which of the 5,000 utility poles on the base the contracting officer will choose for survey and maintenance under this contract.

Bru also protests a solicitation provision permitting the government's quality assurance evaluator to select a minimum of three poles and a maximum of 5 percent of the poles most recently treated for re-excavation to determine whether the work is being performed according to specifications. Bru originally objected to the lack of a definition of "most recently treated," and the Navy now states that it will issue a clarifying amendment, providing that the poles to be re-excavated will be those treated during the previous 2 weeks. Bru still contends, however, that the contractor has no way of knowing exactly how many poles will have to be re-excavated.^{1/}

Bru concludes that bidders therefore must speculate on the level of work required in calculating their bids. This process, Bru concludes, is improper as it does not allow the submission of bids on a common basis. Bru suggests that the solicitation be amended to require bidders to submit separate unit prices for each of the protested tasks, instead of including the cost for this work in the fixed unit prices for the tasks listed in the solicitation.


^{1/} Initially, Bru also protested the alleged restrictiveness of a requirement that all contractors be licensed to handle and apply pesticides. The Navy agreed, stating that only firms working for the contractor and applying pesticides need be licensed or certified. It also will issue an amendment to this effect.

Bru apparently seeks to have the solicitation restructured so as to eliminate, to the maximum extent practicable, any risk that the contractor will be required to provide a service for which there is no specific formula for compensation. The presence of risk to the contractor, however, does not render a solicitation inappropriate. Some risk is inherent in most types of contracts, and bidders are expected, when computing their bids, to account for such risk. Dynalelectron Corp., 65 Comp. Gen. 92 (1985), 85-2 CPD ¶ 634. Here, the protester has not demonstrated that the solicitation places an unreasonable risk on the contractor. Bidders were allowed to view the site of work before the submission of bids, and the potential cost of the tasks challenged by the protester appears to be minor in relation to the cost of the entire contract. Furthermore, contrary to the views of the protester, the provisions contested here affect all bidders equally, and the fact that they may respond differently in calculating their prices is a matter of business judgment and does not preclude a fair competition. See American Contract Services, Inc., B-219852, et al., Oct. 30, 1985, 85-2 CPD ¶ 492.

Bru also express concerns regarding the Army's obligations under the contract to furnish or make available to the contractor housing and storage facilities. Under previous contracts containing the same terms, Bru states, it was forced to incur additional costs because of the inadequate condition of the barracks provided for contractor personnel.

This issue is not for resolution under our Bid Protest Regulations, 4 C.F.R. Part 21 (1986). Whether the Navy will comply with the provisions agreeing to furnish facilities to the contractor is a matter of contract administration and is thus not the responsibility of our Office. See IRI Security Services, Inc., B-218565, July 1, 1985, 85-2 CPD ¶ 7.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel